Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Billed Party Preference for InterLATA 0+ Calls	CC Docket No. 92-77

COMMENTS OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL

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SUMMARY

The Commission tentatively concludes that it should establish benchmarks for operator service rates that reflect what consumers expect to pay. APCC agrees that benchmarks should bear a relationship to a range of rate levels that falls within general consumer expectations. APCC also agrees that an oral disclosure should be required on calls that exceed reasonable benchmarks. However, benchmarks that are strictly defined in terms of operator service charges assessed by the "Big Three" interexchange carriers (AT&T, MCI, and Sprint), or a small percentage increment over Big Three charges, will not serve the public interest. The appropriate benchmarks are those proposed by the industry Coalition in March 1995, which are based on levels above which OSP rates cause substantial numbers of consumer complaints.

Price disclosure requirements in themselves will impose inconvenient call processing delays on consumers. Such requirements are expensive to implement, and may be prohibitive for operator services delivered by store-and-forward technology located inside a payphone. Finally, effective enforcement of such requirements will add significantly to the Commission's adminsitrative costs. Therefore, such requirements should be targeted to apply only to rates that are presumptively harmful to consumers because they are shown to trigger significant consumer complaints. Where rates for operator service calls are not substantially in excess of consumer expectations, price disclosure is unnecessary and burdensome and may convey an unwarranted negative message to consumers.

In addition, thresholds based on Big Three rates are likely to discourage innovative rate structures and force OSPs to mimic patterns established by the Big Three.

APCC continues to believe that the benchmarks proposed in the industry coalition filing of March 1995, based on APCC's survey of OSP rate complaints, are the appropriate benchmarks for triggering oral disclosure requirements and other consumer protection measures. Unless and until the Commission effectively addresses the payphone compensation problem it is mandated to address under Section 276 of the Communications Act, 47 U.S.C. § 276(b)(1)(A), it would be inappropriate for the Commission to adjust 0+ benchmarks below the levels proposed by the Coalition.

In addition to oral disclosure requirements, the Commission should adopt the Coalition proposals for enforcing reasonable benchmarks. A LEC bill screening and reporting requirement would be an important aide to enforcement that is applicable to benchmark-based price disclosure requirements as well as to more traditional rate enforcement. Further, Section 203 tariff filing requirements should be retained, so that the Commission's suspension powers can be used to encourage compliance with benchmarks.

Finally, the Commission should definitively terminate its consideration of billed party preference ("BPP").

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The American Public Communications Council ("APCC") submits the following comments on the Second Further Notice of Proposed Rulemaking ("Notice") in these proceedings, FCC 96-253, released June 6, 1996.

I. INTRODUCTION

The Commission tentatively concludes that it should establish benchmarks for operator service rates that reflect what consumers expect to pay. APCC agrees 100% that benchmarks should be established. Further, benchmarks should bear a relationship to a range of rate levels that fall within general consumer expectations. APCC also agrees that an oral disclosure should be required on calls that exceed reasonable benchmarks. However, APCC disagrees with the Commission's tentative conclusion regarding benchmark levels. Benchmarks that are strictly defined in terms of operator service charges assessed by the "Big Three" interexchange carriers (AT&T, MCI, and Sprint), or a small percentage increment over Big Three charges, will not serve the public interest. Such

benchmarks would unduly interfere with market responses to consumer needs for payphones and payphone services, and would unnecessarily burden consumers, operator service providers ("OSPs") and the Commission.

APCC continues to believe that the benchmarks proposed in the industry coalition filing of March 1995, based on APCC's survey of OSP rate complaints, are the appropriate benchmarks for triggering oral disclosure requirements and other consumer protection measures. Unless and until the Commission effectively addresses the payphone compensation problem it is mandated to address under Section 276 of the Communications Act, 47 U.S.C. § 276(b)(1)(A), it would be inappropriate for the Commission to adjust 0+ benchmarks below the levels proposed by the Coalition.

II. THE COMMISSION SHOULD APPLY ORAL DISCLOSURE REQUIREMENTS AT THE BENCHMARKS ORIGINALLY PROPOSED BY THE INDUSTRY COALITION

The proposal in the Notice arises from two petitions filed with the Commission more than one year ago. In one of those petitions, a broad-based industry coalition consisting of APCC, Comptel, four of the seven Bell companies (Bell Atlantic, BellSouth, NYNEX, and U S West), and two competitive local exchange carriers (MFS and Teleport) proposed that the Commission adopt benchmark rate ceilings at specific levels developed based on analysis of consumer rate complaints.

The Coalition's levels were developed in reliance on a survey by APCC. According to the survey results, consumer complaints filed at the FCC regarding OSP rates almost uniformly involved rates exceeding (and in most cases, substantially exceeding) the Coalition's proposed levels. See Comments of APCC, filed April 12, 1995, Attachment 1 (corrected copy).

APCC urges the Commission to adopt benchmarks at the levels proposed by the Coalition.

A. Price Disclosure Requirements Should Be Targeted Only At Carriers Whose Rates Exceed The Coalition Benchmarks

In its previous comments and reply comments in these proceedings, APCC took the position that an oral disclosure message should be required on calls where rates exceed the Coalition's proposed benchmark levels. APCC argued that "it would not be burdensome or unfair to require OSPs to carry a consumer message for rates that exceed . . . levels proven to cause massive consumer complaints." Reply Comments of APCC, filed April 27, 1995, at 6. At the same, APCC warned that it would be burdensome and unfair and would unnecessarily inconvenience consumers to require an oral disclosure when rates for a call do not exceed reasonable benchmarks. Comments of APCC, filed April 12, 1995, at 13-14; Reply Comments of APCC at 6-8.

The same considerations apply to the Commission's proposed price disclosure message. Price disclosure requirements in themselves will impose significant burdens on

consumers, operator service providers ("OSPs"), and the Commission. In addition, price disclosure requirements triggered by rates that do not substantially exceed reasonably defined consumer expectations could mislead consumers, many of whom probably do not have any definite price expectations about their operator service calls.[1] Therefore, such requirements should be targeted to apply only to rates that are presumptively harmful to consumers because they are shown to trigger significant consumer complaints.

First, consumers must endure listening to a price disclosure message even if they are already comfortable with the rates charged. While the message may be welcome information to some consumers, for others -- who are often impatient in any event with the procedures for entering billing information on 0+ calls, the price disclosure message would merely add to the delay and inconvenience associated with completing an operator services call.[2]

Second, OSPs must invest in the necessary modifications of equipment and facilities to deliver the price disclosure message. Equipment modification to deliver a price disclosure message presents special problems for operator services delivered by store-and-forward technology located inside a payphone. When store-and-forward

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[1] Consumers that dial 0+ on an occasional basis probably do not carry expected prices around in their heads. Yet, when they incur excessively high prices, e.g., prices exceeding the Coalition's proposed benchmarks, they sense that they are being asked to pay "too much." However, it would not be correct to say that these consumers "expect" to pay Big Three prices, or 115% of Big Three prices.

[2] For this reason, and because of the costs of implementing disclosure messages, APCC opposes a requirement for rate disclosure on every call.

payphone technology is used, rate information is typically not stored in the payphone, because it is not necessary to rate a 0+ call at the time it is dialed.[3] Thus, store-and-forward payphones may not be able to deliver the actual price of a 0+ call at the time it is dialed without necessitating prohibitively expensive modifications to the payphone.[4] If the Commission sets a benchmark that is lower than necessary to protect consumers against unreasonably high rates, such prohibitive costs are likely to cause a major dislocation of the payphone market.

Third, the Commission must expend the necessary administrative resources to enforce the disclosure requirement in order for the disclosure requirement to be effective in warning consumers about excessively priced operator services. In order to test for compliance with the requirement, it will be necessary to make test calls from payphones and other public telephones, record the announced price for the call, and then later check the

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[3] On these calls, billing information (including the date, time, destination of the call, number dialed and the calling card number or other billing number) is stored in the payphone, and is later retrieved and brought to a central location. The rating information is added later when the call information is being prepared for billing and collection.

This is in contrast to the situation with sent-paid coin calling. Since sent-paid calls must be paid for at the time they are made, virtually all IPPs have rate tables for sent-paid calls stored inside the payphone, so that the consumer can be prompted to deposit the correct coins as needed, and so that the payphone can confirm that the necessary coins have been deposited. The necessary software to maintain rate tables for sent-paid calls that associate the correct rate with the number dialed consumes a substantial amount of the memory available within an IPP.

[4] Especially if the Commission sets benchmarks that are lower than the Coalition's proposed benchmarks, the Commission should allow store-and-forward payphones to disclose an average price or maximum price rather than the exact price applicable to the call.

announced price against billing entries.[5] The Commission's enforcement burden is likely to be much lighter if it is able to focus its enforcement efforts on a relatively small universe of OSPs and calls.[6]

In light of these substantial implementation costs, common sense dictates that price disclosure requirements should be narrowly targeted at services where they are most needed. Where rates for operator service calls are not substantially in excess of consumer expectations, price disclosure is unnecessary and should not be required.

APCC continues to believe that the appropriate threshold rate levels at which price disclosure and other consumer protection measures should be required are the rate levels stated in the Coalition proposal. The threshold rate should not be based on "average consumer expectations," defined as "Big Three" rates or even a slight increment such as 15% higher than "Big Three" rates. Rates that are only somewhat higher than "Big Three" rates cannot be said to cause significant harm to consumers.[7] Therefore, little benefit to the

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[5] This is the type of compliance monitoring problem that could be greatly assisted by industry self-enforcement programs, such as proposed by APCC in CC Docket No. 96-128. See Comments of the APCC in Docket No. 96-128, filed July 1, 1996.

[6] As discussed below, the Commission should adopt the Coalition's bill screening proposal, supported by four Bell Companies, in which LECs would be required to review their billing and report to the Commission those OSPs whose rates exceed applicable benchmarks. This proposal also will greatly reduce the Commission's enforcement burden because it will enable enforcement monitoring to focus on those OSPs who are exceeding the benchmark. For example, it would not be necessary to make test calls from payphones that are not presubscribed to those OSPs.

[7] A consumer is not being defrauded merely by being charged rates somewhat higher than the Big Three. FCC rules require that the consumer be told the identity of the OSP and that the consumer be able to reach the OSP of choice.

public interest would be gained by requiring OSP rates to be no higher than the Big Three or a slight increment above the Big Three.

Furthermore, a price disclosure requirement that applies to some calls and not others imposes a definite penalty on those OSPs that must make the disclosure.[8] Those OSPs must bear costs and impose inconveniences on callers that are not incurred by OSPs with lower rates. Further, if a price message is given on some calls and not others, the mere delivery of the message is likely to convey a negative message to consumers, whether or not such a message is warranted by the price level involved. Given that some OSPs have higher cost structures than the Big Three, it is unreasonable and unfair to penalize OSPs by imposing costs and inconveniencing and deterring callers unless such penalties are justified by a substantial level of consumer complaints.

In summary, in order to minimize unnecessary implementation costs and inconvenience, and avoid unfairly penalizing OSPs with higher cost structures, price disclosure requirements should be reserved for rates that are so far in excess of consumer expectations as to cause substantial numbers of consumer complaints.

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[8] In this regard, a price disclosure on only some calls is different from a price disclosure requirement that applies to all 0+ and access code calls. However, the latter type of disclosure would not be cost-beneficial for the reasons discussed above.

B. Price Disclosure Requirements Should Be Based On Numerical Thresholds Rather Than Percentages Of Big Three Rates

APCC opposes basing thresholds for price disclosure requirements on Big Three rates or percentage increments over Big Three rates. Competition should not be stifled by forcing all OSP rate structures into a mold established by the Big Three. Recently, for example, Sprint announced a calling card rate based on a flat charge per minute rather than the traditional up-front service charge. (Costs that would have been recovered in the service charge are instead recovered from a somewhat higher per-minute charge.) Although Sprint's new rate structure apparently does not apply on 0+ calls, it illustrates a rate structure that might well be selected by an OSP for 0+ calling. However, an OSP that adopted a Sprint type of rate structure would be likely to exceed a Big-Three-based rate ceiling on longer-duration calls.[9] The Big-Three-based thresholds proposed by the FCC would discourage OSPs from adopting such innovations unless they were first uniformly adopted by the Big Three.

In summary, thresholds based on Big Three rates are likely to discourage innovation in rate structures, and force the industry to mimic patterns set by the largest carriers. In any event, it may be unlawful for the Commission to set rate benchmarks that are tied to rates of one or a few carriers.

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[9] For example, an OSP charging 25 cents per minute on all calls would exceed the proposed 115% of Big Three average benchmark price (based on Appendix E, Table C) for a 23-minute nighttime 200-mile call ($5.75 versus $5.7385). An OSP charging a flat 30 cents per minute would exceed the benchmark price for a 12-minute 200 mile nighttime call ($3.30 versus $3.25).

III. ANY ADJUSTMENT OF COALITION BENCHMARKS MUST AWAIT EFFECTIVE STEPS TO ENSURE FAIR COMPENSATION OF PSPS FOR ALL CALLS

As discussed above, APCC continues to believe that the most appropriate threshold rate levels are those proposed by the Coalition in March 1995. However, the enactment of the Telecommunications Act of 1996, adding Section 276 to the Communications Act, has put a different complexion on the issue of rate ceilings. For the first time, in its proceedings under Section 276, the Commission is authorized and required to examine the entire question of ensuring fair compensation of PSPs for every intrastate and interstate call to "promote the widespread deployment of payphone services in the public interest." 47 U.S.C. § 276(b)(1). APCC's views on how the Commission should implement the Section 276 mandate are presented in detail in its comments in Docket No. 96-128. Suffice it to say here that, in APCC's view, the question to be addressed by the Commission involves how to ensure overall recovery by PSPs, on all calls, of sufficient revenue to enable competitors to supply the nation with high quality payphones in the quantities needed to serve the public interest.

Unless and until the Commission successfully addresses the compensation problem, the pressure on PSPs to gain revenues from interstate 0+ calls because sufficient revenues cannot be gained on other calls will not be substantially relieved, and it would be inappropriate for the Commission to adjust the 0+ benchmarks adopted in these proceedings to levels below the levels proposed by the Coalition.

IV. THE COMMISSION SHOULD UTILIZE OTHER MECHANISMS IN ADDITION TO PRICE DISCLOSURES TO ENSURE COMPLIANCE WITH REASONABLE BENCHMARKS

The Notice does not propose to adopt the Coalition's proposal to require LEC monitoring of OSP bills to ensure compliance with benchmarks. See Rate Ceiling Alternative to Billed Party Preference, filed by the Coalition March 7, 1995 at 7. Under this proposal, supported by four Bell companies and two CLECs as well as APCC and Comptel:

> LECs who bill for [OSPs] would [be required to] supply the FCC with a quarterly report showing a summary of the calls reviewed for the report period which exceed the rates contained in the rate ceiling chart. This summary report would list the operator service provider, total calls for the period, the number of calls reviewed, the number of calls exceeding the rate ceiling, and the percentage of calls reviewed exceeding the rate ceiling. From this summary report the FCC could determine if action concerning particular OSPs was called for. Should the FCC determine that action is needed concerning a particular OSP, a more detailed call by call report for that OSP could be provided by the LEC for those calls that exceeded the rate ceiling.

Id. This LEC screening requirement represents an important aide to enforcement that is applicable to benchmark-based price disclosure requirements as well as to more traditional rate enforcement. For example, once the Commission identifies OSPs whose rates exceed applicable benchmarks, enforcement efforts can concentrate on identifying public

telephones presubscribed to those OSPs and placing test calls from such public telephones, to confirm whether an accurate price disclosure is given.[10]

The Commission also does not propose to retain Section 203 tariff filing requirements, so that its suspension powers can be used to encourage compliance with benchmarks.[11] In its earlier comments on the Coalition proposal, APCC recommended that the Commission establish a longer notice period before above-benchmark rates could take effect, and require detailed cost support information to be filed in support of such rates. This would enable the Commission to suspend and investigate rates that exceed benchmarks, and would provide a useful signal to OSPs encouraging them to keep rates below the benchmarks. Comments of APCC, filed April 12, 1995, at 5-6.

At a minimum, the Commission must carefully consider the merits of these proposals as well as the other proposals in these proceedings. Further, the Commission should not eliminate the Section 203 tariff filing requirement for OSPs in Docket No.

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[10] Indeed, additional information identifying the originating number and location of the public telephones from which above-benchmark calls are placed may be available from the LEC. This would enable even more targeted enforcement.

[11] The Section 203 tariff filing requirement, 47 U.S.C. § 203, was not repealed by the enactment of the "informational tariff" requirement of Section 226. 47 U.S.C § 226(i). Further, the informational tariff requirement does not enable the Commission to suspend and investigate tariff filings before they take effect, as does Section 203. Yet, the Commission has proposed, in another proceeding, to forbear generally from enforcing the Section 203 requirement, and has not made any proposal in this proceeding to retain Section 203 authority with respect to OSP tariffs. See Policy and Rules concerning the Interstate Interexchange Marketplace, CC Docket No. 96-61, Notice of Proposed Rulemaking, FCC 96-123, released March 25, 1996.

96-61 until it has fully considered in this proceeding the potential value of a pre-effective date tariff filing requirement for enforcement of rate benchmarks.

V. THE COMMISSION SHOULD CLOSE ITS INQUIRY ON BPP

The Commission should definitively terminate its consideration of billed party preference ("BPP"). As the Commission recognizes, BPP would impose extraordinarily high costs. Notice, ¶ 4. A study conducted by Charles L. Jackson and Jeffrey H. Rohlfs of Strategic Policy Research, and appended to APCC's reply comments in these proceedings, filed September 14, 1994, concluded that based on the FCC's own assumptions, implementing BPP would cost some $1.5 billion per year and would not produce benefits worth more than $221 million per year. See Jackson & Rohlfs, "Quantifying the Costs of Billed Party Preference" (September 1994). Thus, the record evidence proves conclusively that the BPP proposal would not serve the public interest.[12] The Commission should reject BPP once and for all.

[12] The Commission cites no evidence supporting its speculation that implementation of local service number portability might somehow, eventually, render BPP cost-beneficial.

CONCLUSION

The Commission should adopt regulations in accordance with the foregoing comments.

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Respectfully submitted,

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